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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,979	08/22/2003	Ann Louise McCormack	KCX-1125 (19615)	1058

7590 11/21/2007  
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EXAMINER
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MATZEK, MATTHEW D

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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11/21/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/646,979	Applicant(s) MCCORMACK ET AL.	
	Examiner Matthew D. Matzek	Art Unit 1794	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 28-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____   | 6) <input type="checkbox"/> Other: _____                          |

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/11/2007 has been entered.

***Response to Amendment***

2. The amendment dated 9/11/2007 has been fully considered and entered into the Record. Claim 1 has been amended, but contains no new matter. Claims 1-30 are currently pending. Claims 28-30 have been withdrawn from consideration. Claims 1-27 are currently active. The previous prior art rejections based upon Heyn et al. and Haffner et al. have been withdrawn as the prior art of Record fails to provide for the new claim limitation of having the discrete regions of carrier resin phase completely intermixed with and surrounded by the letdown resin phase.

***Terminal Disclaimer***

3. The terminal disclaimer filed on 9/11/2007 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of applications 10/703,761 and 10/918,553 have been reviewed and is accepted. The terminal disclaimer has been recorded. Therefore, the previous obvious double patenting rejections made in view of the aforementioned applications have been withdrawn.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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4. Claims 1-5 and 7-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heyn et al. (US 6,106,956) in view of Haffner et al. (US 6,045,900) and Norquist et al. (US 6,447,875 B1).

a. Heyn et al. teach a polymeric film comprising at least a first and second contiguous and coextruded portions, wherein the first portion contains filler to increase its water vapor permeability and the second portion serves to improve the tensile strength of the film (Abstract). The first portion (carrier resin) of the film may be made of linear low-density polyethylene copolymer (LLDPE) (col. 2, lines 52-67). It is preferred that the carrier resin contains 65 weight percent or less filler (col. 3, lines 60-65). The second portion (letdown resin) may be made of the same or different polyolefins and as with the first resin the preferred composition is LLDPE. The second portion preferably contains no filler (col. 4, lines 26-39). The LLDPE used in this film is to have a density of about 0.900 to about 0.935g/cm<sup>3</sup> and a melt index of about 0.1 to about 5.0 grams per 10 minutes (col. 3, lines 10-15). The applied film meets the instantly claimed moisture vapor transmission rates (col. 6, lines 49-56) for diaper backsheets. The applied reference is silent as to the use of a nonwoven support layer to be bonded to the oriented film. Instant claim 1 requires different ethylene copolymers with a density difference of at least 0.003 g/cc between the carrier and letdown resins. Heyn et al. provide this for in that densities of the ethylene copolymers may vary from 0.900 to about 0.935g/cm<sup>3</sup> and that the same or different copolymers may be used in the separate phases. As stated in the abstract the polymers used in each phase have different physical properties in order for separation to occur between the two phases. Heyn et al. fail to teach or suggest

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having the discrete regions of carrier resin phase completely intermixed with and surrounded by the letdown resin phase.

b. Haffner et al. teach a breathable barrier comprising a film layer comprising a filled film comprising about 50 to 70% calcium carbonate (col. 8, lines 23-25) and ethylene polymer (Abstract) and another layer comprising a nonwoven, spunbonded or bonded carded web layer (col. 3, lines 50-52). The laminate has a WVTR (MVTR) of more than 1500 g/m<sup>2</sup>/day (col. 3, lines 34-37). Example 1 teaches the use of calcium carbonate (filler), LLDPE [carrier resin] (density of 0.918 g/cm<sup>3</sup> and a melt index of 3.5 g/10 min) and a LDPE [letdown resin] (density of 0.916 g/cm<sup>3</sup> and a melt index of 12 g/10 min). Examiner takes the position that the filler is necessarily contained within the carrier resin phase as the filler is mixed with the carrier resin and then formed into a layer. Haffner et al. teach the blending of LLDPE with densities desirably ranging from 0.86-0.88 g/m<sup>3</sup> with a second polyethylene ranging from 0.90 to 0.95 g/m<sup>3</sup> (col. 9, lines 1-5 and col. 10, lines 1-11) to form an intermediate layer that may also contain filler that is similar in type and content to that of the breathable layer (col. 10, lines 48-58). This provides for density differences of up to 0.09 g/cm<sup>3</sup>.

c. The basis weight of the film layer desirable ranges from 15-35 g/m<sup>2</sup> (col. 10, lines 59-64). An extensive list of ethylene (polyolefin) polymers has been disclosed including linear low-density polyethylene (LLDPE) (col. 7, line 49 – col. 8, line 8). The nonwoven layer may comprise spunbonded and bonded carded webs (col. 3, lines 46-52).

d. Claims 17 and 18 are rejected as the nonwoven woven layer may comprise multilayer nonwoven laminates (col. 11, lines 4-10). Claims 19 and 20 are rejected as the

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film layer may comprise multiple layers **12** (Fig. 1). Haffner et al. teach a WVTR in excess of  $1500 \text{ g/m}^2/\text{day}$ . This anticipates the breathability of instant claim 23. Claim 25 is rejected as the base layer **14** comprises from about 50% to about 98% of the multilayer film thickness (col. 10, lines 66-67). Claims 26 and 27 are rejected as the breathable barrier of Haffner et al. may be used in garments and personal care products (col. 1, lines 14-17).

e. It is noted herein that the teachings of Haffner et al. include WVTR in excess of  $1500 \text{ g/m}^2/\text{day}$ . It is the Examiner's interpretation that such a teaching encompasses the ranges of 5,000 and 10,000  $\text{g/m}^2/\text{day}$  as claimed herein. The use of material with high WVTR is recognized in the art of breathable barriers as it is evidenced herein by Haffner et al. The larger the WVTR value the greater the ability for the article to allow water vapor to be expelled from the article. This is highly desirable as the article is intentionally created for its breathability.

f. Since Heyn et al. and Haffner et al. are from the same field of endeavor (i.e. filler filled LLDPE films), the purpose disclosed by Haffner et al. would have been recognized in the pertinent art of Heyn et al.

g. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have bonded the film of Heyn et al. to the support layer of Haffner et al. as well as make the article according to the basis weights and density and melt flow index differences of Haffner et al. The skill artisan would have been motivated by the desire to create a breathable article that is capable of being used in personal absorbent articles.

h. Norquist et al. disclose a die apparatus that allows for the production of co-extruded polymeric articles with a plurality of distinct, discontinuous phases located within a surrounding matrix (abstract and Figure 4). Polyolefins may be used in the creation of the co-extruded article, for example the embedded phase may comprise polyethylene and the surrounding matrix may comprise polypropylene (claim 4). Various additives may be incorporated into the embedded phase to modify the properties of the finished web (col. 11, lines 56-60). Co-extruded webs formed using the apparatus and method of the invention are also suitable for use in various medical articles. In certain embodiments, phases are formed in the web matrix in order to provide increased strength and improved handling without affecting the overall conformability, transparency or breathability of the polymeric material. A preferred web matrix material for use in constructing such medical articles is polyethylene and a preferred embedded phase material is also polyethylene (col. 14, lines 48-65).

i. Since Heyn et al. and Norquist et al. are from the same field of endeavor (i.e. co-extruded polymeric films), the purpose disclosed by Norquist et al. would have been recognized in the pertinent art of Heyn et al.

j. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have made the co-extruded film of Heyn et al. in the manner set forth in Norquist et al. The skill artisan would have been motivated by the desire to provide the co-extruded film of Heyn et al. with increased strength and improved handling without affecting the overall conformability, transparency or breathability of the polymeric material (col. 14, lines 47-55).

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3. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heyn et al. (US 6,106,956) in view of Haffner et al. (US 6,045,900) and Norquist et al. (US 6,447,875 B1) as applied to claim 1 above, and further in view of Bansal (US 2003/017054 A1). The inventions of Heyn et al., Haffner et al. and Norquist et al. are silent as to the use of an ethylene with a melt index of at least 20g/10min.

a. Bansal discloses a multiple component spunbonded web and laminates thereof comprising a LLDPE core component (abstract) that has a density between 0.91 and 0.95 g/cc and a melt index between 18g/10min to 22 g/10min [0013].

b. Since Heyn et al. and Bansal are from the same field of endeavor (i.e. co-extruded polymers), the purpose disclosed by Bansal would have been recognized in the pertinent art of Heyn et al.

c. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have made the co-extruded film of Heyn et al. having the carrier resin being a polyethylene with a melt index of at least about 20 g/10 min. The skill artisan would have been motivated by the desire to create a product with superior grab tensile strength and minimized surface fuzzing [0026].

#### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-27 have been considered but are moot in view of the new ground(s) of rejection.



***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is 571.272.2423. The examiner can normally be reached on M-F, 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571.272.1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Matthew D Matzek/  
Examiner, Art Unit 1794

/Norca L. Torres-Velazquez/  
Primary Examiner, Art Unit 1794.